THE HON'BLE SRI JUSTICE K.C. BHANU

DATED: _____August, 2005.

W.P. No. 9576 of 2004

Between:

The Charminar Cooperative Urban Bank Limited,

Rep. By its Managing Director

…Petitioner

a n d

L. Pentaiah

…Respondent

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 9576 of 2003

O R D E R:

Challenging the award dated 6.1.2004 in I.D. 34 of 2002 on the file of the Industrial Tribunal-II, Hyderabad the present writ petition is filed.

It is the case of the petitioner that the respondent herein was engaged on a temporary basis as a Part-time Sweeper w.e.f. 15.6.1989 at the Bolakpur Branch of the petitioner bank. He was entrusted with the limited work of sweeping the branch premises for about one hour before opening of the bank everyday. But, he was in the habit of abstaining from duty without informing the officials of the bank for more than a year at a stretch. The respondent filed I.D. 34 of 2002 before Industrial Tribunal-II, Hyderabad alleging that he has been removed from service w.e.f. 26.11.1997 without notice and without any enquiry. Though the petitioner contested it denying the allegations and stating that the respondent was not a permanent employee of the petitioner bank, the Tribunal passed award on 6.1.2004 directing the petitioner bank to reinstate the petitioner into service with continuity of service and full back wages from 27.5.1997 excluding the payments made to him after taking him into service from 1.4.2003. Hence the writ petition.

Whereas, the case of the respondent is that he was removed from service without any notice and without any enquiry. The Tribunal after recording evidence and hearing arguments on both sides passed the award on 6.1.2004 and the same was published vide G.O.Rt.No.234 dated 10.2.2004. Even the petitioner Bank admits that there is no evidence to prove their allegation of absconding from duties frequently by the respondent but states that the evidence of workman shall not be believed. There is no illegality in the order passed by the Tribunal and hence the writ petition is liable to be dismissed.

Heard the learned standing counsel for the petitioner

and the learned counsel for the respondent.

Learned counsel for the petitioner contended that the Tribunal without any evidence ordered for reinstatement with back wages and having given a categorical finding that the petitioner therein failed to produce any documents for himself and also failed to take necessary steps for summoning the management for producing the documents to show that he worked as sweeper-cum-attender, the Tribunal ought not to have ordered reinstatement with backwages.

On the other hand, learned counsel for the respondent contended that the observation of the Labour Court is with reference to the claim of the respondent to the post of Sweeper-cum-Attender but there is evidence on record to show that the respondent herein was working as Sweeper and basing on the evidence available on record, the respondent was directed to be reinstated into service with continuity of service and with full backwages and therefore the order under challenge does not suffer from any incurable legal infirmities.

There cannot be any dispute that unless the findings are so perverse or based upon no evidence at all, normally this Court will not interfere with the findings of the Labour Court. To test whether the Labour Court acted within its bounds and gave a finding based upon any evidence, it is required to notice that the petitioner was appointed as a Sweeper on consolidated basis at Rs.150/- per month. No doubt, his appointment order was purely temporary and terminable without notice. At the same time, Ex.W1 did not indicate that the post for which the respondent was appointed is purely a part-time one. But it is clear that as per Ex.W1 he was appointed on daily wage basis at

Rs.20/- per day. Therefore, the finding of the Tribunal cannot be said to be perverse or contrary to the evidence on record in view of the fact that the petitioner herein also did not deny about issuing of Ex.W1. The evidence on record would also clearly indicate that in each branch of the petitioner's bank, a sweeper works. Even the same is not denied or disputed by the management witness No.1. His evidence is also clear that Sweeper-cum-Attender post does not exist. The plea of the writ petitioner in the Labour Court was that the respondent herein was absconding from duty frequently and according to his whims and fancies he was coming to the Court. But the said fact has not been established by the management in the Labour Court and therefore the plea of the petitioner that the respondent was absconding has not been established. The Tribunal gave a finding that the evidence of the petitioner-respondent herein who filed Exs.W1 and W2 to show his appointment order and his increments in salary respectively and the copy of the letter which was acknowledged by the respondent-management to show that the original was received by the management submitting that he was terminated from service on 26.11.1997 on oral orders and praying for reinstatement remains unopposed. The said finding cannot be said to be perverse or contrary to the evidence on record. Unless a person was terminated from service, there is no need for such a person to submit representation to the management. So, the contention of the respondent can be accepted that he was terminated without following the due procedure required under Section 25F of the Industrial Disputes Act. Therefore, the Tribunal rightly held that the termination order was illegal.

Learned counsel for the petitioner sought to take

advantage of the observations of the Tribunal, which reads as follows:

> "The petitioner failed to produce any documents for himself and also failed to take necessary steps for summoning the management for producing the documents to show that he worked as sweeper-cum-attender".

The Tribunal further observed *"His evidence can be termed as self supporting evidence, because he did not adduce any other oral evidence at least or any documentary evidence or he did not make any attempt to summon the documents of the management to support his stand. So held that the petitioner was working as Sweeper".*

The said findings cannot be held to be contrary to the evidence on record, because there was no evidence produced by the petitioner-respondent herein to show that he worked as sweeper-cum-attender. But there is evidence on record to show that he worked as Sweeper. Therefore, basing on the material on record the Tribunal gave a finding that the respondent-management was somehow or the other showing all tactics to victimize the petitioner and in the circumstances the Tribunal inclined to believe the petitioner's version that he was terminated from service through oral orders on 26.11.1997. The said finding is based upon the appreciation of evidence of WW1, who is the respondent herein. Basing on the appreciation of evidence if a view is taken by the Tribunal, the same cannot be said to be perverse. So, contrary to that view this Court cannot take a different view because the appreciation

of evidence has to be done by the Tribunal but not by this Court while exercising the powers of judicial review. There cannot be any dispute that this Court has to see the deficiency in the decision making process while passing the award by the Tribunal but not the decision itself. Therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference by this Court.

It is also contended by the learned counsel for the petitioner that in view of the fact that the petitioner-bank went into doldrums and considering the financial position of the bank 344 employees were detrenched and the order passed by the Tribunal would increase the financial burden of the bank, which is in the process of revival. But, since the order of termination is illegal, there is no other alternative except reinstatement of the petitioner into service. Whether the bank's financial position is very weak or not, it would not be a ground to deny the rightful benefits to the petitioner. It is always left open for the petitioner-bank to deal with in terms of G.O.Ms.No.4 dated 28.2.2003 when the Bank is deeply involved in financial crisis, to reduce the staff. Admittedly the staff is reduced from 450 to 150. So it is not a case of retrenching of all the employees. Therefore, the grounds on which the present writ petition is filed are not sustainable.

Hence the writ petition is devoid of merit and it is accordingly dismissed.

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K.C. Bhanu, J.

Date: --07—2005.

MVB.